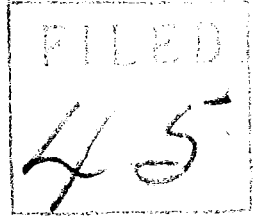


INSURANCE:

Payment of claims, Insurance and Emergency Fund;
Reserve fund, annual statement - stipulated premium
company.



November 19, 1947

Honorable Owen G. Jackson
Commissioner of Insurance
Jefferson City, Missouri

Dear Mr. Jackson:

This will acknowledge the receipt of your letter requesting the opinion of this Department on the subjects set forth therein in eight separate questions. Your letter is as follows:

"I would appreciate your opinion on the following questions with respect to companies organized under Article 4, Chapter 37, R.S. Mo. 1939:

"1. Are death claims incurred during the first policy year to be paid out of the mortuary premiums for the first policy year?

"2. Does not the Insurance Fund consist of the renewal mortuary premiums (other than first year) together with interest of at least 4% per annum thereon but excluding the special loading for limited payment policies and interest thereon?

"3. Does not the Emergency Fund consist of the balance remaining in the Insurance Fund after paying for death, disability and other policy claims (excluding such claims during the first policy year)?

"4. Is the amount of the Emergency Fund required to be shown as a liability in an annual statement or examination report in order to determine the financial condition of a company?

cc
See examiner's report
filed in cabinet in
vault.
Returned to
Ins. Dept. 12/9

"5. Is the amount of the Reserve Fund, computed as set forth in Section 5876, required to be shown as a liability in addition to the Emergency Fund in an annual statement or examination report in order to determine the financial condition of a company?

"6. Can funds be transferred from the Emergency Fund to provide for the Reserve Fund, thus reducing the Emergency Fund below the amount required by Section 5875?

"7. Can a stipulated premium company continue to operate even though the Emergency Fund is impaired but not exhausted?

"8. Is a stipulated premium company insolvent when its admitted assets are less than its unpaid claims and other liabilities including the amounts of the Emergency and Reserve Funds?

"The report of examination, together with exceptions filed thereto, and a transcript of testimony recently taken at a hearing, accompany this request in the belief that they will provide whatever additional information might be needed to properly understand the questions presented."

The question you submit in paragraph 1 of the letter is: Whether death claims incurred during the first policy year are to be paid out of the mortuary premiums for the first policy year. It would appear from reading both Sections 5874 and 5875, Article 4, Chapter 37, R.S. Mo. 1939, that this question should be answered in the affirmative.

Said Section 5874 is as follows:

"Every corporation, company or association doing business under the provisions

of this article shall charge a mortuary premium at least equal to that of yearly term insurance at age of entry according to the actuaries' or combined experience mortality table, with interest at four per cent, and such mortuary premium shall be increased by a loading of not less than twenty per cent for age twenty and all ages under twenty, and one per cent additional for each additional year of age, renewable term policies excepted from such loading. Said premium may be paid annually, semi-annually, quarterly, bi-monthly or monthly in advance."

We observe no reason or cause for charging a mortuary premium at least equal to that of yearly term insurance at age of entry with interest at four per cent, and the increase thereof by a loading of not less than twenty per cent for age twenty and all ages under twenty, and one per cent additional for each additional year of age, renewable term policies excepted from such loading, unless such provisions pointed toward the necessity of paying death claims incurred during the first policy year out of the mortuary premiums paid for the first policy year.

We believe the terms and conditions of said Section 5875 confirm this construction of said Section 5874 by stating, in part, that:

"After the first policy year the mortuary premium, according to the terms of premium payments of each policy, with the loading of the same as provided in section 5874, together with all interest and other accumulations of said fund, except the special loading for limited payment policies, with interest thereon as provided in section 5876, shall constitute the insurance fund of the corporation, company, or association from which all policy obligations shall be paid, * * *".

There would be, we believe, no sound reason in providing the terms of Section 5875 for procedure "After the first policy year the mortuary premiums * * * shall constitute the insurance fund of the corporation, company, or association from which all policy obligations shall be paid"

unless it was intended by the Legislature that the death claims incurred during the first policy year should be paid out of the mortuary premiums for the first policy year, leaving the terms of said Section 5875 to control and direct all policy obligations "after the first policy year."

The question submitted in paragraph 2 of your letter is, whether the Insurance Fund consists of the renewal mortuary premiums (other than first year) together with interest of at least 4% per annum thereon but excluding the special loading for limited payment policies and interest thereon. We think this question also is to be answered in the affirmative. We believe the plain terms contained in said Section 5875 permit no other construction of the language of that Section. That Section on this question states:

"After the first policy year the mortuary premium, according to the terms of premium payments of each policy, with the loading of the same as provided in section 5874, together with all interest and other accumulations of said fund, except the special loading for limited payment policies, with interest thereon as provided in section 5876, (Section 5876 provides for four per cent), shall constitute the insurance fund of the corporation, * * *".

We find no other section, or part of any section, in said Article 4, contrary to the terms of said Section 5875 respecting what constitutes the Insurance Fund.

The question submitted in paragraph 3 of your letter is: Whether the Emergency Fund consists of the balance remaining in the Insurance Fund after paying for death, disability and other policy claims (excluding such claims during the first policy year). We think this question also should be answered in the affirmative.

This takes us back again to Section 5875, Article 4, Chapter 37, R.S. Mo. 1939. That section provides what shall constitute the Emergency Fund. Said Section 5875, after providing for "what shall constitute the Insurance Fund" in part, states: "and the amount remaining in said fund (evidently referring to the Insurance Fund) not required to provide for death, disability and other policy

claims, shall be set aside as an emergency fund, and may be deposited with the insurance department." We think it clear and beyond controversy that the provisions of said Section 5875 point out from whence shall be derived the Emergency Fund, and what shall constitute the said fund.

The question submitted in paragraph 4 of your letter is: Whether the amount of the Emergency Fund is required to be shown as a liability in an annual statement or examination report in order to determine the financial condition of a company.

We think this question also must be answered in the affirmative.

Section 5889 of said Article and Chapter, provides for the annual report. That section is as follows:

"The annual business of each and every corporation, company or association transacting business under the provisions of this article shall close on the 31st day of December of each year, and it shall, within sixty days thereafter, prepare and file in the office of the superintendent or other officer having supervision of insurance matters, a detailed statement, made upon blanks furnished by the insurance department, and verified under oath by the president and secretary of the company or association, giving all information in detail, that the insurance department may require, so that its true financial condition may be known."

Said Section 5889, supra, provides in the latter part thereof, that such annual report shall be a "detailed statement, made upon blanks furnished by the insurance department, and verified under oath by the president and secretary of the company or association, giving all information in detail that the insurance department may require, so that its true financial condition may be known." (Under-scoring ours). This would seem to make it imperative that the Emergency Fund provided for in said Section 5875 be included in the annual report so that the true financial condition of the company may be known to the Insurance Department. Without this item in the report it certainly would be withholding information which the Insurance Department might vitally need.

The question submitted in paragraph 5 of your letter is: Whether the amount of the Reserve Fund computed as set forth in Section 5876, Article 4, Chapter 37, R.S. Mo. 1939, is required to be shown as a liability in addition to the Emergency Fund in an annual statement or examination report in order to determine the financial condition of a company.

This question is also to be answered in the affirmative.

Said Section 5876 provides for the issuing of limited payment or any form of investment policies. Said Section further provides the amount of premiums shall not be less than the net term rate for the kind of policy issued, increased by such sum as will, improved at four per cent, equal the net single premium for the attained age at the end of the paying term of the policy, according to the actuaries' or combined experience table of mortality on which its calculations are based. Then said Section 5876 states that such increase of premium shall be reserved in a separate fund for the purpose of sustaining such policies after the cessation of premium payments, and shall be deposited with the Insurance Department in such securities as are now required by law. Thus, it seems there is created by said Section 5876 a Reserve Fund for the payment of limited payment policies or any form of investment policies issued by a company. These policies like other policies or contracts of an insurance company, we think, become liabilities. The Insurance Department would be entitled to such information in the annual statement or examination report, touching the question of the extent of the liability of a company growing out of such policies in order to determine whether there is sufficient assets in the Reserve Fund to discharge the liabilities of the companies on such policies, and in order for the Insurance Department to determine the financial condition of any such company. Said Reserve Fund is made up, insofar as limited payment policies are concerned, of premiums fixed at certain amounts as hereinabove pointed out. Said Section 5876 provides further that if any corporation doing business under the provisions of said Article 4, shall fail to state in its limited payment policies the portion of each of the premiums to be held by it for the purpose of sustaining the policies after the years during which the premiums are to be paid, then all such limited payment policies or investments that may be issued shall be valued according to the actuaries' or combined experience table and interest at four per cent. Thus, it seems that an extra penalty is placed upon the holders of such policies if the correct amount

of premiums as allocated to each policy shall not be stated therein. These assets and liabilities so shown would show, we think, the financial condition of any such company operating under said Article 4. We believe this condition, as well as others hereinabove pointed out, requires that the Reserve Fund computed as set forth in said Section 5876 is required to be shown as an asset in addition to the Emergency Fund in the annual statement or examination report of a company, in order to determine the financial condition of such company.

The question submitted in paragraph 6 of your letter is: Whether funds may be transferred from the Emergency Fund to provide for the Reserve Fund, thus reducing the Emergency Fund below the amount required by Section 5875.

This question, we believe, is to be answered in the negative. We find no statutory authority authorizing the transfer of the Emergency Fund or any part thereof to supplement or increase the Reserve Fund in any manner whatsoever.

Section 5875, as hereinabove pointed out, provides the source from which is derived and the quantity of the fund which shall constitute the Emergency Fund, and provides further, that such fund when created may be deposited with the Insurance Department. Said Section 5875 does provide that if, by any reason of excessive mortality, or other cause, the emergency Fund as first constituted shall become exhausted, then the Superintendent of Insurance shall require the officers of such corporation, company or association, to notify all policyholders to pay an extra premium, sufficient to meet the amount of the maximum of the policies issued, apportioned equitably, and providing further that if the members fail to pay such extra premium within 30 days, such policies shall be commuted proportionately, and the corporation shall be liable only for such policies as thus commuted. This is the only reference made in said Article 4, as we observe such provisions, regarding any depletion of the Emergency Fund. Without statutory authority for the transfer from the Emergency Fund of funds to provide for the Reserve Fund a company would have no authority to make such transfer, we believe, especially if the Emergency Fund should be reduced below the amount required by said Section 5875.

The question you submit in paragraph 7 of your letter is: Whether a stipulated premium company may continue to operate even though the Emergency Fund is impaired but not exhausted. It is our opinion that a company may continue to

operate under such circumstances.

Referring again to said Section 5875 we find that the Legislature, in passing said Section as a part of said Article 4, anticipated that by excessive mortality, or other cause, the Emergency Fund, derived from the Insurance Fund, and being the balance remaining in said fund not required to provide for death, disability and other claims, might become "exhausted". Further provisions of said Section 5875 follow and provide the means and method of re-establishing said fund. But said Section 5875 makes no provision or demand that such a company discontinue business because of the depletion of the Emergency Fund. The sole penalty it seems, provided in said Section 5875 for the failure to re-establish the Emergency Fund, is visited upon the policyholders by providing that the policies of the members shall be commuted as is stated in said Section 5875. So, it would seem that the intent of the Legislature was that any company operating under said Article 4 could continue business even though its Emergency Fund were exhausted, and for the greater reason we believe it may continue to transact business where the Emergency Fund is only impaired.

The question submitted in paragraph 8 of your letter is: Whether a stipulated premium company is insolvent when its admitted assets are less than its unpaid claims, and other liabilities, including the amounts of the Emergency and Reserve Funds. We believe this question must be answered in the affirmative.

The lexicographers and the decisions of the Courts have many times given academic and active definitions of the word "insolvent". Our Supreme Court and our Courts of Appeals have upon numerous occasions defined the word. We shall use only one citation from our Supreme Court here. The question of what constituted insolvency of a firm doing business was before our Supreme Court in the case of Mitchell et al. vs. Bradstreet Co., 116 Mo. 226. The Court, defining the word, l.c. 240, (citing Bouvier's Dictionary, Insolvency, 809), said:

"* * * A firm is understood to be insolvent when unable to pay their debts as they fall due in the usual course of trade or business. Bouvier's Dictionary, Insolvency, 809. It 'implies as well the present ability of the debtor to pay out of his estate all his debts, as also such attitude of his property as that it may be reached and subjected by process of law, without his consent, to the payment of such debts.' Eddy v. Baldwin, 32 Mo. 369; Thompson v. Thompson 4 Cush. 127; Bank v. Walton, 5 L.R.A. 765."

It would seem to be conclusive that if a company doing business on the stipulated premium plan does not have sufficient assets to pay its unpaid claims, and other liabilities, including those incident to the Emergency and Reserve Funds, it would be, according to the above definition of our Supreme Court, insolvent.

C O N C L U S I O N

It is, therefore, the opinion of this Department, in view of the provisions of the above cited and quoted statutes that, with respect to companies organized under Article 4, Chapter 37, R.S. Mo. 1939:

- 1) Death claims incurred during the first policy year are to be paid out of the mortuary premiums for the first policy year.
- 2) That the Insurance Fund of such companies consists of the renewal mortuary premiums (other than first year) together with interest of at least four per cent per annum thereon, but excluding the special loading for limited payment policies and interest thereon.
- 3) That the Emergency Fund of such Article 4 companies consists of the balance remaining in the Insurance Fund created by Section 5875, R.S. Mo. 1939, after paying for death, disability and other policy claims, excluding such claims during the first policy year.
- 4) That the Emergency Fund is required to be shown as a liability in the annual statement or examination report of any such company.
- 5) That the Reserve Fund computed as set forth in Section 5876, R.S. Mo. 1939, is required to be shown in the annual statement or examination report.
- 6) That funds may not be transferred from the Emergency Fund to the Reserve Fund reducing the Emergency Fund below the amount thereof required by Section 5875, R.S. Mo. 1939.

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7) That a stipulated premium company may continue to operate even though the Emergency Fund is impaired but not exhausted.

8) That a stipulated premium company is to be regarded as insolvent if such company does not have sufficient assets to pay its unpaid claims, and other liabilities, including those incident to the Emergency and Reserve Funds.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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